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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67921; File No. SR-OCC-2012-17)

September 25, 2012

Self-Regulatory Organizations; The Options Clearing Corporation; Advance Notice Relating to the Margining of Segregated Futures Customer Accounts on a Gross Basis

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4(n)(1)(i),<sup>2</sup> notice is hereby given that on September 14, 2012, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the advance notice described in Items I and II below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Advance Notice

The proposed rule change would allow OCC to become compliant with Commodity Futures Trading Commission (“CFTC”) Rule 39.13(g)(8)(i), which requires the margining of segregated futures customer accounts on a gross basis.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and advance notice and discussed any comments it received on the proposed rule change and advance notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4(n)(i).

has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.<sup>3</sup>

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

The purpose of this proposed rule change is to provide for the margining of OCC segregated futures customer accounts on a gross basis, as required by CFTC Rule 39.13(g)(8)(i).<sup>4</sup>

**The CFTC's Customer Gross Margin Rule**

On October 18, 2011, the CFTC issued final regulations implementing many of the new statutory core principles for CFTC-registered derivatives clearing organizations ("DCOs") enacted under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). As a registered DCO (as well as a registered securities clearing agency), OCC has previously implemented rule changes designed to bring OCC into compliance with CFTC rules applicable to DCOs that went into effect on January 9, 2012<sup>5</sup> and May 7, 2012.<sup>6</sup> OCC believes it is necessary to amend its Rules in order to ensure compliance with the gross margin rule, which requires a DCO to "collect initial margin on a gross basis for each clearing member's customer account(s) equal to the sum of the initial margin amounts that would be required by the derivatives clearing organization for each individual customer within that account if each individual customer were a clearing member."<sup>7</sup> The CFTC gross margin rule goes into effect on

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<sup>3</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>4</sup> 17 CFR § 39.13(g)(8)(i).

<sup>5</sup> See SR-OCC-2011-18.

<sup>6</sup> See SR-OCC-2012-06.

<sup>7</sup> Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69439 (November 8, 2011).

November 8, 2012; however, OCC intends to begin complying with the gross margin rule on Monday November 5, 2012 as described herein.

### **OCC's System for Calculating Margin**

OCC currently calculates margin requirements for each clearing member's segregated futures customer account held at OCC on a net basis by applying OCC's System for Theoretical Analysis and Numerical Simulations ("STANS"). STANS calculates margin with respect to each account of a clearing member, including each clearing member's futures customer account(s), on a net basis, i.e., considering the positions of a clearing member, including positions held in each clearing member's futures customer account(s), as if they are part of one portfolio and margining accordingly. STANS includes both a net asset value ("NAV") component and a risk component. The NAV component marks all positions to market and nets long and short positions to determine the NAV of each clearing member's portfolio of customer positions. The NAV component represents the cost to liquidate the portfolio at current prices by selling the net long positions and buying in the net short positions. The risk component is estimated by means of an expected shortfall risk measure obtained from "Monte Carlo" simulations designed to measure the additional asset value required in any portfolio to eliminate an unacceptable level of risk that the portfolio would liquidate to a deficit.

OCC presently lacks sufficient information about individual customer positions to calculate margin at the level of each individual customer. However, OCC has been coordinating with other DCOs to establish an industry-wide mechanism for complying with the customer gross margin rule as applied to futures customer accounts. Pursuant to this new system, each DCO's clearing members will submit data files to the DCO identifying positions by numerical

customer identifiers.<sup>8</sup> OCC will use this information to calculate margins, using STANS, for each customer identifier of a clearing member and to aggregate those margin calculations to determine the total futures customer margin requirement for the clearing member's segregated futures customer account(s) held at OCC.<sup>9</sup> OCC will then compare the aggregate positions reported by each clearing member with its own records and make any needed adjustments to the margin calculation to ensure all positions on OCC's books are properly margined.

### **Proposed By-Law and Rule Changes**

The proposed changes to OCC's Rules provide for the calculation of margin for segregated futures customer accounts on a gross basis and mandate submission of the clearing member data files necessary to allow OCC to calculate margin at the level of each futures customer. In the event that the data included in these data files is incomplete (for example, if OCC shows positions held in a clearing member's segregated futures accounts, but those positions are not reflected in the data file), OCC will create a separate sub-account to be used for margin calculation purposes only. Positions recorded on OCC's books and records, but not reflected in the data file, will be attributed to this sub-account and a margin amount will be

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<sup>8</sup> The position data provided to OCC by clearing members will not include (a) information with respect to the allocation of margin assets to particular customers, nor (b) information respect to settlement obligations arising from the exercise, assignment or maturity of cleared contracts. For this reason, OCC will treat all margin assets and settlement obligations for each account to which the gross margin rule applies as being in sub-accounts of the Clearing Member. OCC will calculate margin, using STANS, separately for each sub-account and will aggregate the calculated margin requirements at the level of the clearing member's segregated futures customer account to which the sub-accounts relate.

<sup>9</sup> OCC currently carries the following account types that are segregated pursuant to Section 4d of the Commodity Exchange Act: Segregated Futures Accounts, Segregated Futures Professional Accounts, non-Proprietary X-M accounts, and internal non-proprietary cross-margining accounts. All such accounts would be margined on a gross basis under the proposed amendments to Rule 601.

calculated for the sub-account. This margin amount will be added to a clearing member's margin requirement. OCC has determined to adopt this conservative approach to dealing with discrepancies between its own records and clearing member data files in order to ensure that OCC does not collect an inadequate amount of margin from clearing members.

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The proposed changes to OCC's By-Laws are consistent with the purposes and requirements of Section 17A of the Exchange Act because they are designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the CFTC without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest. The proposed rule change is not inconsistent with any rules of OCC.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed changes contained in the advance notice would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Advance Notice Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

### III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed changes contained in the advance notice may be implemented pursuant to Section 806(e)(1)(G) of Clearing Supervision Act<sup>10</sup> if the Commission does not object to the proposed changes within 60 days of the later of (i) the date that the advance notice was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed changes contained in the advance notice if the Commission objects to the proposed changes.

The Commission may extend the period for review by an additional 60 days if the proposed changes raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. Proposed changes may be implemented in fewer than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed changes and authorizes the clearing agency to implement the proposed changes on an earlier date, subject to any conditions imposed by the Commission.

OCC has also filed the advance notice as a proposed rule change pursuant to Section 19(b)(1) of the Act<sup>11</sup> and Rule 19b-4 thereunder.<sup>12</sup> Pursuant to those provisions, within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to

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<sup>10</sup> 12 U.S.C. 5465(e)(1)(G).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>12</sup> 17 CFR 240.19b-4.

90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The clearing agency shall post notice on its web site of proposed changes that are implemented.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2012-17 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2012-17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the advance

notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, N.E., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of OCC and on OCC's website at

[http://www.optionsclearing.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_12\\_17.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_12_17.pdf).

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2012-17 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

By the Commission.

Kevin M. O'Neill  
Deputy Secretary

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